UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

[redacted]
TESSA G.,

Plaintiff,

v.

XAVIER BECERRA, Secretary,
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendant.

CIVIL ACTION FILE NO:
1:23-cv-02665-LMM-RGV

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff Tessa G. (hereinafter "Plaintiff"), so pseudo-named by the EEOC Office of Federal Operations, respectfully files this Complaint against Xavier Becerra, in his official capacity as Secretary of the U.S. Department of Health and Human Services (hereinafter "HHS", "Defendant," and/or "Agency").

INTRODUCTION

1. This Complaint is being brought as a result of HHS violating federal anti-discrimination laws discrimination in employment, rather than providing equal employment to individuals with disabilities and being a model employer for people with disabilities as required by federal law.

2. This Complaint is also being brought for deprivation of Plaintiff's property and liberty interests without due process under the Fifth Amendment of the U.S. Constitution based on the manner in which the Plaintiff was terminated and disparaged thereafter, without any notice or opportunity to be heard, irrespective of why HHS terminated Plaintiff.

JURISDICTION and VENUE

3. Plaintiff submits herself to the jurisdiction of this Court.

4. Defendant is a governmental entity subject to suits of this kind. This Court has jurisdiction over Defendant.

5. Pursuant to 28 U.S.C. § 1331 (federal question) this court also has jurisdiction over Plaintiff's deprivation of due process claim under the Fifth Amendment of the U.S. Constitution, and the Administrative Procedure Act, 5 U.S.C. § 702, et seq., under which the federal government has waived sovereign immunity for claims of this type; as well as under 28 U.S.C. § 2201.

6. Pursuant to 28 U.S.C. § § 1331, 1343 (civil rights), this Court has subject matter jurisdiction over Plaintiff's discrimination claims under Section 501 of the Rehabilitation Act of 1973 ("Section 501"), 29 U.S.C. § 791, 42 U.S.C. § 2000e-16(c).

7. Plaintiff has exhausted her administrative remedies with respect to her claims under the Rehabilitation Act against the Defendant pursuant to 29 C.F.R. 1614.407(c).

8. Pursuant to 28 U.S.C. § 1391(e), venue is proper in the United States District Court for the Northern District of Georgia, Atlanta Division, because most of the events giving rise to this Complaint occurred therein.

THE PARTIES

The Plaintiff

9. Plaintiff is an attorney with a background in public health. Plaintiff developed an interest in health law and policy by the time she started high school following an intense interest in public affairs. Plaintiff subsequently focused college coursework on health policy.

10. Plaintiff has been disabled nearly her entire life.

11. Among other conditions, Plaintiff has had epilepsy, several learning disabilities, a hearing impairment, as well as some other chronic medical conditions both neurological and non-neurological in nature for nearly her entire life. Plaintiff spent nearly all of grade school in special education as a result of her disabilities.

12. Subsequently, during college, Plaintiff had to take a leave of several years from school when her seizures became much more frequent and severe.

13. Due to her increasingly-frequently seizures at that point, Plaintiff also had difficulty maintaining employment during and shortly after college; the jobs Plaintiff held at the time were largely retail and/or administrative in nature.

14. After college and following surgical treatment of her seizures, Plaintiff attained long-term employment in positions entailing a combination of research, writing and administrative work. She soon thereafter enrolled in graduate school part-time, and attained full-time work in health policy.

15. Plaintiff went on to earn dual advanced degrees in law and public health, focusing on policy. Among other honors and awards, Plaintiff received an award from a national health law society for her work at a health department during law school, which entailed identifying and establishing the legal foundations for several public health-related initiatives.

16. Plaintiff held several positions related to health policy before, during, and after law school, prior to obtaining employment at the Agency in spring 2013. The Agency, through its official Matthew Penn, Plaintiff's ("mentor") supervisor, selected Plaintiff to work at the Agency based in significant part on her prior work experience, along with the educational credentials Plaintiff held.

17. For several years until her employment with the Agency, Plaintiff's seizures had abated, though Plaintiff has always continued to also deal with the effects of her other neurological disabilities and "neurodivergent" conditions; namely, these

included the combination of Plaintiff's learning disabilities, especially her dyslexia, as well as her auditory difficulties.

18. Notwithstanding the combination of her disabilities, Plaintiff was on a continued upward trajectory in her career at the intersection of public health and law when she began her employment with the Agency.

19. Following her (abrupt) termination from the Agency after Plaintiff's epilepsy became known, Plaintiff was stigmatized by a record of termination from the Agency (the CDC), and a scarred work history that encumbered Plaintiff's attempts to obtain alternative suitable employment related to her professional field.

20. Multiple alternative potential employers that interviewed Plaintiff questioned her directly and/or staff at the Defendant/Agency, specifically about Plaintiff's termination from the Defendant/Agency, before declining to hire Plaintiff.

21. Following the termination and retaliation at issue in this Complaint, Plaintiff developed multiple new disabilities and conditions, chiefly a severe sleep disorder, depression, high blood pressure, and chronic pain.

22. Plaintiff is fully capable of and qualified to perform the essential functions of jobs similar to and including the position she held at the Agency/Defendant employer, especially with reasonable accommodations.

23. However, there are many types of jobs in the national economy that would be unsuitable for Plaintiff due to a combination of her disabilities on the one hand, but also her specialized level of professional experience and educational training on the other.

24. Following Plaintiff's difficulty locating employment related to her law and/or public health backgrounds subsequent to the Agency/Defendant terminating her, Plaintiff enrolled in a state vocational rehabilitation ("VR") program at the recommendation of a counselor in the Lawyer Assistance Program of a bar association.

25. This was despite Plaintiff never needing help from a VR program to obtain employment before working at the Agency. That was prior to being stigmatized by a termination record following Plaintiff's disability disclosure.

26. After Plaintiff enrolled in the VR program, the VR program in turn contracted with a headhunter to try locate employment for the Plaintiff.

27. The headhunter reported to the Plaintiff and the VR case worker that employers that he had reached out to were not receptive to hiring a disabled worker at Plaintiff's level of education and experience, even with incentives offered by the VR program to incentivize the hiring of disabled workers. That was without any of those employers (contacted by the headhunter via the VR program) learning about Plaintiff's termination from the Agency/Defendant.

The Defendant

28. Defendant is the Secretary of the United States Department of Health and Human Services ("HHS") and is sued in his official capacity. HHS is an executive agency, and an "employer" for purposes of the Rehabilitation Act.

29. HHS is an arm of the federal government for purposes of the Fifth Amendment.

ADMINISTRATIVE HISTORY

30. After Plaintiff was abruptly removed from her position following the revelation of her epilepsy to the Defendant/Agency, and the hiring and training of her (Plaintiff's) replacement shortly thereafter, Plaintiff commenced the EEO process shortly after her termination by contacting the Defendant's/Agency's EEO complaints manager in November 2014.

31. In February 2015, Plaintiff filed a formal EEO complaint alleging that the Agency discriminated against her on the basis of her disability (epilepsy) in violation of Section 501 of the Rehabilitation Act when it demoted Plaintiff by removing her from her project manager position, when the Agency thereafter directed ORISE to terminate Plaintiff's employment at the Agency, and when the Agency subsequently retaliated against Plaintiff by disparaging her (Plaintiff) to others (individuals and/or alternative employers) in her professional field of public

health law and health policy, in turn impeding Plaintiff's ability to locate alternative employment in her professional field.

32. In May 2015, the Agency's dismissed Plaintiff's claims for demotion because it was time-barred, and dismissed Plaintiff's retaliation claim because the Agency misconstrued Plaintiff's retaliation claim as arguing that her termination was retaliatory.

33. Thereafter in May 2015, Plaintiff clarified to the Agency's EEO complaints manager that Plaintiff's basis for her retaliation claim was not that Plaintiff's termination itself was retaliatory; but it was the Agency's disparagement of Complainant to prominent individuals and/or prospective alternative employers in Plaintiff's professional field/circles following Plaintiff's termination, and the Agency's interference with Plaintiff's ability to locate alternative employment in her field, that was the basis of her retaliation claim.

34. As initial evidence of such retaliation, Plaintiff described not just her significant difficulty locating alternative employment compared to less difficulty she (Plaintiff) experienced with her job searches prior to her employment at the Agency.

35. Plaintiff also submitted to the Agency/Defendant's EEO investigator an email from a law school professor informing her (Plaintiff) that Plaintiff's supervisor at the Agency/Defendant had brought up to him (the professor) "the

topic of you" (Plaintiff), and that he (Plaintiff's supervisor) told the professor about Plaintiff's EEO activity. Thereafter, the professor stopped meeting with or talking to Plaintiff. This was despite his (the professor's) close academic and professional relationship with Plaintiff for over five years by then, and his (the professor) having helped Plaintiff obtain several positions during and after law school, including Plaintiff's position at the Agency.

36. Following protracted administrative proceedings and noncompliance by the Agency/Defendant, an Administrative Judge issued a default judgment on Plaintiff's part.

37. Specifically, the AJ held the Defendant/Agency discriminated against the Plaintiff when it terminated her because the Defendant/Agency had recruited and hired her (Plaintiff's) replacement almost immediately, within few weeks, after the Defendant/Agency found out Plaintiff has epilepsy, and while Plaintiff was on medical leave for her epilepsy.

38. The AJ furthermore observed that similarly-situated workers, who held positions identical to Plaintiff under the same supervisor of the Agency/Defendant but who were not disabled, were not demoted or terminated after they exhibited performance issues similar to those Plaintiff's supervisor at the Agency alleged were the "non-discriminatory" reasons for the adverse employment actions at issue in this Complaint.

39. The AJ moreover noted that Agency managers and staff discussed Plaintiff's epilepsy, and expressed concern that her epilepsy might impact Plaintiff's work performance.

40. In her ruling on the Agency's liability for discrimination, the AJ also officially reinstated Plaintiff's retaliation claim. However, the Agency never conducted an investigation of Plaintiff's retaliation claim, nor did the AJ permit discovery or full development of the record regarding Plaintiff's retaliation claim.

41. Throughout the administrative proceedings, the Agency did not contest the EEOC's/AJ's finding that the Agency discriminated against the Plaintiff on the basis of her disability (epilepsy) when it orchestrated the termination of Plaintiff's employment at the Agency. The Agency similarly did not appeal or contest any of the AJ's or EEOC's decisions throughout the administrative processing of this Complaint.

42. After the AJ's decision holding that the Agency discriminated against Complainant on the basis of her disability when it removed her from her employment, the Agency, for the first time during the protracted administrative proceedings, alleged that Plaintiff was not an "employee" of the Agency, but rather that Plaintiff's position was merely an "educational fellowship".

43. The Agency/Defendant moreover argued that the AJ/EEOC should withhold most equitable relief, namely reinstatement, full back pay and/or front pay, from

Plaintiff because the Agency asserted Plaintiff would purportedly not have remained employed at the Agency beyond her third contract term following two years of employment at the Agency.

44. Plaintiff set forth evidence demonstrating that she had a history of multiple contracts that were previously renewed; that is, before the Agency found out about Plaintiff's epilepsy.

45. Plaintiff moreover set forth evidence demonstrating that numerous similarly-situated individuals, initially hired into identical or nearly-identical "ORISE Fellow" positions by the same official at the Agency under a series of "fixed-term" contracts, were repeatedly renewed over a continuous succession of contracts until they were ultimately shifted to permanent "federal employee" status at the Agency.

46. Plaintiff further set forth evidence tending to show that as a proximate result of the stigma of her termination and/or the disparagement to which she was subjected by the federal government, she was denied alternative employment by other employers, including another federal agency, subsequent to her removal.

47. After the EEOC AJ and OFO denied most equitable relief and compensatory damages from Plaintiff notwithstanding all the evidence, Plaintiff appealed the AJ's decision to the OFO in August 2020.

48. Although the OFO slightly increased its award of compensatory damages, in August 2022 the OFO upheld the denial of the majority of equitable relief based on what Plaintiff has maintained was an incomplete and/or inaccurate rendition of the full record.

49. In August 2022, the OFO nonetheless remanded a portion of the Complaint back to the AJ to determine Plaintiff's entitlement to pecuniary damages.

50. Thereafter, in September 2022, Plaintiff filed a Request for Reconsideration with the OFO, which the OFO denied on March 16, 2023.

51. Subsequent to the OFO's August 2022 appellate decision, Plaintiff discovered a new witness and evidence further establishing that the Agency uses "ORISE Fellows" interchangeably with other contractor mechanisms, and that most individuals who begin working at the Agency as "ORISE Fellows" remain employed at the Agency long-term.

52. Based principally on her discovery of new evidence, on April 17, 2023, Plaintiff filed another "Request for Reconsideration" to the EEOC Commissioners.

53. OFO responded to Plaintiff's new request via email and reiterated that Plaintiff had no further right of administrative Appeal or Reconsideration on the OFO's denial of further relief, despite the remanded portion of Plaintiff's claim for pecuniary damages to the AJ; the OFO expressly encouraged Plaintiff to bring her Complaint to federal court to seek further relief.

54. Plaintiff has exhausted her administrative remedies under the Rehabilitation Act, and now brings this Complaint.

STATEMENT OF FACTS

Hiring process for, and nature of, Plaintiff's "employment" at CDC/HHS/Agency

55. In March 2013, Plaintiff applied for a position of "ORISE Fellowship" via email submitted directly to the CDC's Public Health Law Program ("PHLP"), within the Agency, and addressed her application to Matthew Penn.

56. Matthew Penn is a GS-15 federal employee, and has been the PHLP Director in the Agency since approximately April 2011.

57. In March 2013, shortly after Plaintiff applied for a position Mr. Penn and several Agency staff interviewed Plaintiff. During the interview, Mr. Penn asked Plaintiff if she would be prepared to move down to Atlanta for a "permanent" job.

58. Several weeks thereafter in April 2013, Mr. Penn told Plaintiff he was still determining the duration of the position he would offer Plaintiff based on funding availability.

59. Several weeks thereafter, on April 18, 2013, Mr. Penn emailed Plaintiff to offer her "A position as an ORISE Fellow with the Centers for Disease Control and Prevention, Office for State, Tribal, Local and Territorial Support, Public Health Law Program." for four months.

60. Mr. Penn noted in his offer [to Plaintiff] that, "Your experience and enthusiasm will be an asset to our Center."

61. Plaintiff promptly accepted the offer to Mr. Penn in April 2013.

62. Plaintiff accepted Mr. Penn's job offer before she knew what projects she would work on.

63. In May 2013, Mr. Penn again emailed Plaintiff to assign her first project to her, telling her that she would be "aiding with" the updating of an ongoing assessment of laws by the CDC addressing the epidemic of prescription drug overdose upon arriving at the Agency.

64. Upon receiving the first work assignment from Mr. Penn, Plaintiff sought to clarify with Mr. Penn whether her position was certain, because she [Plaintiff] had not yet received any communication from ORISE confirming the administrative processing of her position with CDC.

65. Mr. Penn replied to Plaintiff that the status of the ORISE approval and processing of her position was just "paperwork," and (again) referring to Plaintiff's position as a "job".

66. Between April and May 2013, Mr. Penn and/or other managers of the Defendant/Agency directly sent Plaintiff background check and other administrative forms to complete prior to Plaintiff beginning to work at the Agency.

67. In early May 2013, Plaintiff went down to Atlanta, GA to meet Mr. Penn in person for the first time, and to find housing before relocating to Atlanta to start working at the Agency.

68. When Plaintiff first met Mr. Penn in person in May 2013, he informed her that her second project, after assisting with the prescription drug overdose assessment, would be developing an assessment for CDC's Division of Adolescent and School Health ("DASH").

69. As of late May 2013, when Plaintiff moved her belongings down to Atlanta, Plaintiff had still not received any communication from anyone at ORISE.

70. Plaintiff relocated herself and her belongings down to Atlanta, GA in very late May 2013, entirely on the reassurances of Mr. Penn that Plaintiff had a "job" at the Agency, irrespective of any ORISE approval or communication Plaintiff had still not yet received.

71. Managers at the Agency, namely Mr. Penn together with other personnel of the Agency, arranged Plaintiff's June 2, 2013 start date directly with Plaintiff.

72. It was after Plaintiff had arrived in Atlanta, GA and secured housing, on May 28, 2013, that Plaintiff received the very first communication from ORISE via email, confirming her "ORISE Fellowship" at the Agency, and her monthly pay and health insurance.

73. Managers at the Agency/Defendant, namely Mr. Penn together with the Agency's Human Resources Office, determined Plaintiff's monthly pay level, and directed ORISE to pay a specific monthly sum labeled a "stipend" to Plaintiff.

74. The Agency/Defendant moreover directed ORISE to provide Plaintiff a certain level of health insurance coverage.

75. The Agency/Defendant transferred funds to ORISE to cover Plaintiff's employment at the Agency.

76. Plaintiff was required to provide specific services to the Agency/Defendant in exchange for her monthly remuneration.

77. Plaintiff was required to provide specific services to the Agency/Defendant according to the instruction, manner, supervision, and feedback provided by Plaintiff's supervisor, Mr. Penn.

78. At all times relevant to this Complaint, Agency managers and employees directly supervised and directed Plaintiff's work at the Agency.

79. At all times relevant to this Complaint, managers at the Agency were authorized to discipline Plaintiff, including terminating her relationship with the Agency/Defendant.

80. At all times relevant to this Complaint, Plaintiff's position with the Agency was considered full-time, and she was not permitted to have other/additional employment.

81. At all times relevant to this Complaint, the services provided by Plaintiff were an integral part of the Agency/Defendant's primary business.

82. Whereas the Defendant Agency is located in Atlanta, Georgia, ORISE is located in Oak Ridge, Tennessee.

83. ORISE does not have staff on site at the Defendant Agency.

84. Plaintiff has never been supervised by anyone in/from ORISE.

85. Plaintiff has never even met anyone from ORISE.

86. Plaintiff has never received assignments or tools or equipment from ORISE.

87. At all times relevant to this Complaint, HHS/CDC provided all the tools, equipment, resources, and facilities necessary for Plaintiff's work at and for Defendant/Agency.

88. Contrary to the assertions by the Defendant, at all times relevant to this Complaint, Plaintiff was an employee of the Agency for purposes of the Rehabilitation Act.

The facts leading to Plaintiff's discrimination Complaint

89. Roughly two months after Plaintiff began working at Defendant/Agency, in approximately July 2013, Mr. Penn counseled Plaintiff on her need to work on being more concise in her communication.

90. Also in July 2013, during a gathering in his office with Plaintiff and several other Agency managers and staff, including M.B. and M.R., Plaintiff witnessed Mr. Penn ridicule an intern (first initial "D") behind the intern's back based on D's (apparent) neurodivergent characteristics, laughing about how the intern was "so special".

91. Plaintiff thus became further fearful of disclosing or making known her own neurodivergent-related disabilities.

92. In September 2013, Mr. Penn told Plaintiff that he noticed improvement in Plaintiff's communication, and offered Plaintiff her first renewal for another eight months.

93. In approximately early February 2014, Plaintiff shifted from working on the prescription drug overdose assessment, her first assigned project, to primarily beginning to develop her second project for DASH.

94. In April 2014, Mr. Penn as well as other managers in Agency/Defendant reviewed, and expressed their approval of, Plaintiff's progress on her initial development of the DASH project.

95. Subsequently in early May 2014, Mr. Penn offered Plaintiff a third contract term of employment at the Agency for a full year.

96. On May 12, 2014, Mr. Penn signed off on Plaintiff's third contract term extension.

97. Several days later in May 2014, Plaintiff disclosed her epilepsy to Mr. Penn, following a (rare) seizure she had several weeks prior that involved a loss of consciousness.

98. Plaintiff disclosed her epilepsy to request brief medical leave effective early June 2014 to receive follow-up testing and treatment for her epilepsy, and to inform Defendant/Agency of her need for an accommodation of rides to meetings offsite.

99. Mr. Penn told Plaintiff she could take (unpaid) medical leave in early June, and did not ask Plaintiff for any supporting documentation of her disability and/or medical condition(s).

100. Plaintiff also informed Mr. Penn that she (Plaintiff) was eligible for Schedule-A excepted hiring for people with disabilities.

101. Mr. Penn responded by telling Plaintiff that he likes ORISE Fellows because [he] "could fire them whenever I need to".

102. At the same meeting, after disclosing her disability status and asking for medical leave, Plaintiff asked Mr. Penn to evaluate her performance so Plaintiff

could gauge her strengths and weaknesses and better perform in her role. Mr. Penn refused to offer such a review or feedback.

103. Thereafter, Multiple managers and staff in the Agency discussed Plaintiff's epilepsy on several occasions amongst themselves, and made comments to Plaintiff regarding their concern about Plaintiff's epilepsy and the effect it would potentially have on Plaintiff's performance.

104. For example, one DASH project co-manager, L.S., asked Plaintiff if she (Plaintiff) would be able to care for herself in light of her seizures.

105. Another colleague in DASH, A.M., reported that Agency staff discussed their concern the DASH project would fall behind due to Plaintiff's epilepsy and medical status.

106. While Plaintiff was out on medical leave in late spring, Mr. Penn and other managers at Defendant/Agency recruited and hired Plaintiff's (first) replacement (whose initials are L.A.).

107. Following Plaintiff's return from her medical leave in mid-June 2014, Agency managers informed Plaintiff they had hired another person (L.A.) to work on (Plaintiff's) DASH project.

108. Plaintiff had no involvement in interviewing, meeting, speaking with and/or selecting L.A. before she was hired, even though she (L.A.) was hired to work on

the DASH project Plaintiff had single-handedly developed for several months prior.

109. Although Agency managers did not initially tell Plaintiff the new hire would replace Plaintiff, one of the managers involved with selecting the new hire, M.R., told Plaintiff that L.A., the new hire would not get along with Plaintiff.

110. Several weeks thereafter, Plaintiff mentioned to M.R. her need for a that she (Plaintiff) needed to find a ride to another Agency campus to take care of some work tasks because she (Plaintiff) was unable to drive for a period due to her recent seizure, and mentioned that such rides are an accommodation for those unable to drive like the M.R. told Plaintiff that "People who work at the CDC need to have cars and drive; that's part of working at CDC."

111. Also during approximately mid-summer 2014, Agency managers expressed aggravation when Plaintiff requested to reschedule a meeting with Agency partners that she (Plaintiff) was scheduled to moderate because she (Plaintiff) felt lightheaded and at risk of an imminent seizure.

112. The new "ORISE Fellow" Agency managers hired, L.A., who would apparently become Plaintiff's replacement, began her employment on August 11, 2014, roughly two months after she (L.A.) was recruited and hired, after re-locating from Seattle to Atlanta.

113. On August 9, 2014, two days before L.A. began working at the Agency, Mr. Penn emailed the Complainant his approval of her recently-proposed PHLP-DASH project plan covering the next nine months.

114. The first milestone/DASH project deliverable date listed was for the end of September 2014.

115. Mr. Penn and Agency managers directed Plaintiff to train L.A. in the guise that she (L.A.) would "assist with" the DASH project.

116. On September 1, 2014, roughly two weeks after L.A. began working at the Agency, the Plaintiff received an automated email notification from the Agency's People Processing system informing Plaintiff that her "separation date" was forthcoming and scheduled for September 15, 2014.

117. Two weeks before the expiration of Plaintiff's prior two contract terms (in September 2013 and May 2014), respectively, the Plaintiff had also previously received the same deactivation notices from the Agency's People Processing system.

118. The Plaintiff's coworkers in the Agency who also held Legal Analyst "ORISE Fellow" positions under Mr. Penn, and who were on the same contract cycle as the Plaintiff, had received the same deactivation notices from People Processing at the same time as the Plaintiff did, in September 2013 and May 2014.

119. But when the Plaintiff asked her coworkers if they had received that deactivation notice on September 1, 2014, none of them had received such an email then.

120. When the Plaintiff asked Mr. Penn, on September 1, 2014, why she had received that email, he replied that she (Plaintiff) did not need to worry about that.

121. On or before September 11, 2014, Mr. Penn called L.A. and an intern who had also recently started working on the DASH project, in to meet with him (Mr. Penn) and another manager.

122. Mr. Penn asked both L.A. and the intern "how things were going" with Plaintiff. When L.A. said negative things about Plaintiff, Mr. Penn told them (L.A. and the intern) that he "expected to hear that."

123. At that meeting, Mr. Penn told L.A. and the intern that he would be removing Plaintiff from the DASH project, and that they would no longer work and/or communicate with Plaintiff.

124. Mr. Penn told L.A. and the intern that he would be taking adverse action against Plaintiff before he (Mr. Penn) told Plaintiff there was anything wrong with her (Plaintiff's) performance.

125. On September 11, 2014, Mr. Penn called Plaintiff into his office without prior notice and abruptly removed her from the DASH project.

126. This was despite Mr. Penn not giving Plaintiff any negative feedback at all for over a year since he had told Plaintiff she (Plaintiff) needed to work on being more concise.

127. At that meeting, Mr. Penn gave no reasons to Plaintiff for removing her from the DASH project.

128. At that Meeting, Mr. Penn did not tell Plaintiff what work she would perform from then onward after removing her DASH project duties.

129. From September 11, 2014 onward until her termination, Plaintiff was marginalized.

130. On September 22, 2014, Mr. Penn emailed several staff throughout the PHLP to solicit negative feedback regarding Plaintiff.

131. In that email, Mr. Penn told the staff he was "behind with this."

132. Those staff Mr. Penn had emailed to solicit negative feedback regarding Plaintiff had not worked with Plaintiff for over roughly eight months at that point.

133. Late on September 30, 2014, several weeks after she was removed from the DASH project and marginalized, Mr. Penn emailed Plaintiff her first and only, and negative, performance review ("Review").

134. The Review contained numerous general yet pervasive alleged performance problems that had never been raised before; and moreover consisted in significant

part of criticizing Plaintiff's "neurodivergent" characteristics more common among people with disabilities such as Plaintiff's.

135. The Review did not allege any change in Plaintiff's performance between the time Mr. Penn issued it and when he offered and signed off on Plaintiff's two prior contract renewals.

136. The Review was devoid of any incidents, examples, or specific performance expectations that the Complainant had been required, but failed, to meet.

137. Neither the Review nor email to which the Review was attached mentioned anything about developing a performance improvement plan, or even any opportunity for, performance improvement on Plaintiff's part.

138. When the Complainant met with Mr. Penn on October 1, 2014, the day after Mr. Penn issued the negative Review to discuss the Review, Mr. Penn again refused to cite any further details such as specific incidents or examples of issues, or tell the Complainant what performance expectations she would be expected to meet going forward.

139. Several days later, in the evening on October 6, Mr. Penn told the Complainant that it would "probably be helpful" to develop a "professional development plan."

140. However, October 7, Mr. Penn cancelled his meeting with the Complainant for that morning.

141. Later in the evening of October 7, 2014, Mr. Penn emailed Plaintiff to (re)schedule the meeting to discuss "professional development" for October 14, and requested that Plaintiff formulate and send him a draft "professional development" plan before the meeting (that he had rescheduled).

142. Nevertheless, Mr. Penn continued to refuse to describe what expectations she (Plaintiff) was required to meet, to enable Plaintiff to draft a "professional development" and/or "performance improvement" plan.

143. Plaintiff had previously requested, and Mr. Penn had previously approved, brief leave for just over a week, from October 8 until October 19, 2014 for observances with her family; Plaintiff had taken off the same time in fall 2013.

144. Plaintiff had thus requested to postpone the October 14, 2014 meeting because she had already been scheduled to be away then.

145. Plaintiff's postponement of the October 14 meeting and failure to develop a plan by that date, notwithstanding that Plaintiff was away on pre-approved leave, was a reason Mr. Penn cited for terminating Plaintiff from her employment.

146. Early on October 20, the day Plaintiff returned to the office after her brief leave, Mr. Penn emailed several PHLP staff to ask if the Plaintiff had met with them "within the last 2-3 weeks."

147. One PHLP senior analyst, L.C., reminded Mr. Penn that she (L.C.) thought Plaintiff was away during the prior few weeks.

148. On October 23, 2014, three days after Plaintiff returned from brief leave, 23 calendar days after issuing her (first) negative review, and less than 1.5 months after removing Plaintiff from her project, Mr. Penn emailed ORISE and demanded that Plaintiff be terminated.

149. In his email to ORISE directing ORISE to terminate the Plaintiff, Mr. Penn told ORISE that, "[N]o" one wants to work with her." Mr. Penn ended that email [directing Plaintiff's termination] with, "thank you and please let me know if you have any questions."

150. In that email to ORISE directing ORISE to terminate the Plaintiff, Mr. Penn did not instruct ORISE to give the Plaintiff any advanced notice of her termination.

151. The final payment ORISE issued to the Plaintiff was on October 31, 2014.

152. But Mr. Penn continued to assign smaller work tasks to Plaintiff to complete.

153. Plaintiff continued to submit work products to Mr. Penn through November 4, 2014, at which point Plaintiff became ill.

154. On November 7, 2014, while Plaintiff was out a few days due to illness, Plaintiff received a letter from ORISE via email informing her her "fellowship" position had been terminated effective two days prior, on November 5.

155. In its November 7, 2014 letter first informing Plaintiff of her termination, ORISE provided no reason at all to the Plaintiff for her termination.

156. Plaintiff was given no prior notice, nor any form of hearing or due process, prior to her termination.

157. Plaintiff commenced the EEO process with Defendant Agency via an email to the Agency's EEO complaints manager on November 21, 2014.

158. On December 22, 2014, Plaintiff separately sent a letter to ORISE claiming that her termination was discriminatory; and was in breach of her contract via ORISE because she could only be terminated for cause and with notice, yet was not given (any) notice prior to, or reason for, her termination

159. On March 5, 2015, ORISE, through its counsel, sent a reply letter to Plaintiff generally denying discrimination and breach of contract, and issuing for the very first time some (post-hoc) explanation to Plaintiff for why she was terminated.

160. Neither ORISE nor the Agency ever described what specific expectations Plaintiff was required to and/or failed to meet.

161. The March 2015 ORISE letter was issued roughly four months after Plaintiff was terminated.

162. In that March 2015 letter, ORISE informed Plaintiff that they (ORISE) on two (2) occasions had encouraged the Agency to transfer Plaintiff to a different division/department within the Agency for the remainder of her (third) term, and offered the Agency "alternatives to termination."

163. However, ORISE stated in its March 2015 letter that the Agency refused to transfer Plaintiff to another division/department in lieu of termination, and (otherwise) rejected the "alternatives to termination" ORISE recommended to the Agency

164. In its March 2015 letter, ORISE stated that the Agency's decision to terminate the Plaintiff was made (sometime) prior to November 4, 2015.

165. Neither ORISE nor the Agency explained why it was necessary to terminate Plaintiff without any prior notice—not even one day before.

166. When the Defendant/Agency had terminated another ORISE Fellow working under Mr. Penn in approximately April 2014, M.B., she (M.B.) was given at least three weeks prior notice. This was based on a public email sent to the PHLP division thanking her (M.B.) for her service.

167. Another PHLP manager (M.R.) told Plaintiff soon after M.B.'s termination that M.B. was allegedly terminated for lying about her (M.B.'s) work hours/status.

168. In that same affidavit, in response to a question from the EEO investigator about whether it was typical for ORISE fellows to be terminated without notice like Plaintiff was, Mr. Penn replied he was "[N]ot sure if that is how terminations from ORISE usually work."

169. Several paragraphs below, in that same affidavit, Mr. Penn nevertheless stated that "ORISE went in a different direction with" Plaintiff by not giving her (Plaintiff) notice compared to the termination of M.B. roughly a half year prior.

170. In that same August 13, 2015, affidavit, in response to a question from the EEO investigator to explain the allegation that Mr. Penn had "badmouthed" Plaintiff to others after her termination, Mr. Penn stated, "I do not recall conversations where I said anything negative about [Plaintiff] outside the people involved in her work or termination."

171. Plaintiff had (previously) submitted to the EEO investigator an email from a law school professor, dated January 2015, informing her (Plaintiff) that Mr. Penn had brought up to him (the professor) "the topic of you" (Plaintiff), and that Mr. Penn had told the professor about Plaintiff's EEO activity.

172. In his affidavit dated August 13, 2015, well over a year after he first found out about Plaintiff's epilepsy, Mr. Penn, a GS-15 official in the CDC who has worked under a physician, stated that, "I do not have a good understanding of what epilepsy is or what it does to people."

173. Mr. Penn stated in his August 13, 2015 affidavit that the second reason he demanded Plaintiff's termination was because Plaintiff purportedly "missed deadlines."

174. Plaintiff did not miss any project deadlines; her first project deadline/milestone after she drafted and submitted her 2014-2015 project plan prior to L.A. beginning at the Agency, was in late September 2015. That deadline was after Plaintiff was removed from her project.

175. Prior to her removal from the DASH project on September 11, 2014, Plaintiff had worked on the DASH project for no more than eight months; Plaintiff had worked on the prescription drug assessment project with A.M. for the prior approximately eight months.

176. After Plaintiff's removal from the DASH project and soon thereafter the Agency, the DASH assessment and project fell several years behind.

177. One of the non-disabled comparators Plaintiff cited in her 2015 EEO Complaint, A.M., repeatedly fell behind in her (prescription drug assessment) project that she (A.M.) began working on in 2012, but was not demoted nor terminated.

178. Other fellows and interns had specifically indicated to Plaintiff between 2013 and approximately early 2014, while Plaintiff was still working on the prescription drug project, that A.M. had communication difficulties and thus sought clarification on instructions for the prescription drug project from Plaintiff.

179. Nevertheless, A.M. shifted from four ORISE renewals between April 2012 and August 2015, to other contracts through Agency contractors other than ORISE, and then to permanent federal employment in 2019.

180. Another non-disabled comparator Plaintiff cited in her original Complaint, G.S., was told by Mr. Penn within two months of beginning at the Agency, at approximately the same time as Plaintiff, that he (G.S.) needed to improve his performance.

181. Unlike the Plaintiff, G.S. was given specific feedback on how he needed to improve, and was given several months to work on improvement.

182. Like A.M., G.S. had his contracts via ORISE renewed several times before shifting to other Agency contracts.

183. After multiple renewals of their ORISE contract periods, A.M., G.S., as well as multiple other similarly-situated workers, were shifted, specifically at the Agency's/Defendant's request and arrangement, to other Agency contracts.

184. Thereafter, after first being hired as ORISE fellows and renewed across multiple contracts, A.M., G.S. and numerous similarly-situated workers were ultimately transitioned to permanent federal employment at the Agency/Defendant once federal slots became available.

185. In June 2016, less than two years after Plaintiff's removal following the revelation of her epilepsy, an audit of the Agency/Defendant conducted by Korn

Ferry found that, "Employees with a disability tended to be significantly less favorable compared to able bodied employees overall..."

186. The same Korn Ferry audit found that, "CDC allows employees to be discriminated against, for their disabilities. They allow managers to harass, bully and retaliate against employees who fight for their rights that are being violated."

187. The following year, in 2017, there was public reporting regarding widespread claims of discrimination and retaliation at the Defendant Agency.

LEGAL CLAIMS

COUNT I: DISCRIMINATORY DISCHARGE IN VIOLATION OF THE REHABILITATION ACT.

188. Plaintiff incorporates by reference all preceding paragraphs of this Complaint.

189. At all times relevant to this Complaint, Plaintiff is a person with a disability under the Rehabilitation Act.

190. Epilepsy is expressly enumerated as a covered disability under the regulations implementing the Americans with Disabilities Amendment Act of 2008.

191. At all times material to this Complaint, Plaintiff was in fact an "employee" of the Agency/Defendant for purposes of the Rehabilitation Act, contrary to the Defendant/Agency's contentions otherwise.

192. At all times relevant to this Complaint, Plaintiff was, and still is, qualified for the position she held from which she was terminated, with or without reasonable accommodations.

193. Plaintiff's qualification for the position from which she was terminated is evidenced by her (Plaintiff's) being hired based expressly on her professional experience and educational attainment, and the Defendant/Agency twice renewing Plaintiff's contracts, for three terms, prior to Plaintiff revealing her epilepsy.

194. Defendant/Agency violated the Rehabilitation Act by terminating Plaintiff due to her disability, instead of accommodating her disability.

195. The reasons asserted by Defendant Agency for Plaintiff's discharge are false and pretext for disability discrimination.

196. Defendant, through its agents, acted willfully, wantonly, intentionally and in reckless and callous disregard of Plaintiff's federally protected rights.

197. As a direct and proximate result of Defendant's conduct, Plaintiff is entitled to both equitable and monetary relief including, but not limited to, reinstatement or front pay, full back pay, compensatory damages, pre-judgment interest, attorneys' fees and litigation costs.

198. As a direct and proximate result of Defendant's conduct, Plaintiff has been deprived of the opportunity to remain in her chosen profession and advance in her

career and profession; income in the form of wages; as well as other benefits of employment.

COUNT II: FAILURE TO ACCOMMODATE IN VIOLATION OF THE REHABILITATION ACT.

199. Plaintiff incorporates by reference all preceding paragraphs of this Complaint.

200. At all times relevant to this Complaint, Plaintiff is a person with a disability under the Rehabilitation Act.

201. Despite Plaintiff telling Mr. Penn, upon disclosing her epilepsy, that she needed specific feedback to gauge her performance, Mr. Penn refused to provide such feedback to Plaintiff, telling her a review was "unnecessary."

202. Mr. Penn told this to Plaintiff immediately after he had told her that he likes ORISE fellows because he could fire them whenever he needs to.

203. The Department of Labor-funded organization Askearn.org, which assists employers with accommodating disabled workers, has stated that regular and specific feedback is a recognized accommodation for "neurodivergent" workers because neurodivergent individuals are known to have more difficulties than "neurotypical" people in gauging their performance and/or cues from others.

204. Defendant not only refused to provide the reasonable accommodation of issuing her timely and specific performance feedback.

205. Instead of engaging in the interactive process with Plaintiff after she disclosed her disability and indicated she needed accommodations, Mr. Penn denied Plaintiff was disabled, even without requesting medical documentation.

206. When Plaintiff asked for other accommodations beyond specific performance feedback, such as rides and scheduling changes, to the extent the Agency technically provided accommodations, the Agency expressed its disapproval in providing such accommodations.

207. When Plaintiff used her accommodation of (unpaid) leave in late spring 2014, the Agency recruited Plaintiff's replacement.

208. During that summer, after Plaintiff returned from leave, when Plaintiff had asked for a ride to another Agency campus, and specifically mentioned to MR on that occasion that she (Plaintiff) could not drive then because of her epilepsy, MR told Plaintiff "People who work at the CDC need to have cars and drive; that's part of working at CDC."

209. Thereafter that summer, when Plaintiff needed (the accommodation of) rescheduling a meeting with agency partners because she felt like a seizure was imminent, Agency and project managers expressed significant frustration.

210. Instead of accommodating the Plaintiff, the Agency wrongfully demoted and then terminated her as a result of her disability.

211. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff has suffered profound harm to her career and lifetime earnings; emotional and physical pain and suffering; inconvenience, mental anguish, loss of enjoyment of life, and other past and future pecuniary and non-pecuniary losses.

COUNT III: RETALIATION IN VIOLATION OF THE REHABILITATION ACT.

212. Plaintiff incorporates by reference all preceding paragraphs of this Complaint.

213. At all times relevant to this Complaint, Plaintiff is a person with a disability under the Rehabilitation Act.

214. Plaintiff engaged in protected activity by filing an EEO claim.

215. Defendant/Agency further violated the Rehabilitation Act by retaliating against Plaintiff for engaging in EEO activity following her termination, by disparaging Plaintiff to other individuals and/or employers in her professional field thereby interfering with Plaintiff's ability to obtain suitable alternative employment following her termination.

216. As a direct and proximate result of Defendant's retaliatory actions, Plaintiff suffered damages consisting of, but not limited to, lost wages and other benefits of employment, emotional distress, mental anguish, humiliation and pain and suffering.

217. Defendant engaged in its retaliatory conduct intentionally and/or with malice and/or reckless indifference to the rights of Plaintiff.

218. The foregoing actions of Defendant caused Plaintiff mental anguish, loss of dignity and other intangible injuries.

219. Plaintiff has suffered profound, long-term professional, economic, financial, social, familial, personal, emotional, and physical harm due to Defendant's violation of the Act.

220. Defendant acted with malice toward Plaintiff, therefore justifying an award of punitive damages in addition to equitable and compensatory relief.

COUNT IV: ILLEGAL DISCLSOURE IN VIOLATION OF THE REHABILITATION ACT.

221. Plaintiff incorporates by reference all preceding paragraphs of this Complaint.

222. At all times relevant to this Complaint, Plaintiff is a person with a disability under the Rehabilitation Act.

223. Defendant violated the Rehabilitation Act by discussing and disclosing, via Mr. Penn and/or other Defendant/Agency managers/staff, Plaintiff's medical condition/disability (epilepsy) to individuals to whom Plaintiff did not disclose it.

224. In her final Affidavit issued to the EEO investigator on August 8, 2015, Plaintiff identified the Agency staff to whom Plaintiff had disclosed her disability.

225. Thereafter, the EEO investigator emailed to Plaintiff the draft affidavit provided by Donald Benken. In that (first version) of his affidavit, Mr. Benken stated that Plaintiff disclosed her epilepsy to him. Plaintiff promptly informed the EEO investigator, and in turn the Agency, that was false; that she (Plaintiff) had not discussed her epilepsy (or even general health status) with Mr. Benken.

226. Previously, in spring 2015, several months after Plaintiff's termination, a DASH colleague of hers had informed Plaintiff that DASH staff had discussed Plaintiff's health status, and their concern that the DASH project would be delayed due to Plaintiff's health status.

227. During the course of the Agency's EEO investigation into Plaintiff's discriminatory termination claim, after Plaintiff had filed her formal EEO complaint with the Agency in February 2015, it became apparent that Agency managers and staff had (also) disclosed and discussed Plaintiff's epilepsy and health status in (further) violation of the Rehabilitation Act.

228. Plaintiff has suffered profound, long-term professional, emotional, economic, financial, reputational, social, personal, and physical harm, as well as loss of dignity, due to Defendant's violation of the Act.

229. Defendant acted with malice toward Plaintiff, therefore justifying an award of punitive damages in addition to equitable and compensatory relief.

COUNT V:

Deprivation of Due Process in Violation of the Fifth Amendment of the U.S. Constitution and § 702 of the Administrative Procedure Act

230. Plaintiff incorporates by reference all preceding paragraphs of this Complaint.

231. At the specific direction of the Agency/Defendant, an arm of the federal government, Plaintiff was both initially hired and terminated by the federal government via its contractor ORISE.

232. At the direction of the Agency/Defendant, Plaintiff was employed under a series of "fixed-term" contracts, each term containing a specific end date.

233. The contract terms under which ORISE hired Plaintiff on behalf of the Agency/Defendant stated that Plaintiff would only be terminated before the specified end date in each successive contract period if she (Plaintiff) did not meet the "expectations" of her appointment.

234. Under Georgia and common law, the Agency breached its contract with Plaintiff, and/or induced ORISE to breach its contract with Plaintiff, when the Agency directed ORISE to terminate the Plaintiff during her third contract term, without describing the expectations the Plaintiff (purportedly) failed to meet and/or without providing notice per the ORISE terms and conditions.

235. On May 19, 2014, when the Plaintiff signed off on and accepted her third contract term with the Agency covering the period of June 3, 2014-June 2, 2015,

the Plaintiff reasonably relied on the assurance of the Agency and the contract that the Plaintiff would not be arbitrarily and/or suddenly terminated from her position.

236. Under the ORISE contract, Plaintiff reasonably expected to receive advance notice of a termination occurring during the middle of a contract term.

237. Plaintiff had a property interest in her position/ at the Agency/Defendant that Agency/Defendant could not deprive Plaintiff of without notice and an opportunity to be heard.

238. Plaintiff had a separate liberty interest in her position at the Agency, based on which she was protected from arbitrary termination that lacked due process, termination that stigmatized the Plaintiff and injured her reputation such as to prevent the Plaintiff from obtaining other employment in her field and/or with the federal government, the largest employer in the US.

239. Despite her right to due process, Plaintiff was terminated from her position without any notice before—not even one day prior—to her termination.

240. Plaintiff was not given any opportunity to be heard before, or even shortly after, her termination, and was not even provided any (purported) reasons for her termination until months later, after which Plaintiff had already been denied alternative employment.

241. Nevertheless, despite Plaintiff's Constitutional Due Process rights, the Agency/Defendant deprived her of her property without due process, as well her liberty interests in seeking (alternative) employment with the federal government, and even outside the federal government in her professional field more broadly without the stigma of being fired from a (prominent) government agency.

242. After her termination, several employers, including another federal agency, questioned the Plaintiff as well as staff at the Defendant Agency, about her termination from the Agency and thereafter declining to hire Plaintiff after inquiring about her termination from the Agency/Defendant; this followed multiple interviews with Plaintiff, discussing start dates, and conducting background checks.,.

243. After Plaintiff was unable to locate alternative employment with other federal agencies and/or other contractors serving the Defendant/Agency following the revelation of her termination, a human resources official within the Washington, DC headquarters of HHS, initials K.W., in August 2015 conveyed to Plaintiff's career counselor via email that she (Plaintiff) would likely have more difficulty locating federal employment as a result of her (Plaintiff's) record of termination from the Defendant/Agency, even as an "ORISE Fellow".

244. Despite applying to dozens of positions inside and outside the federal government, each time another prospective employer found out about Plaintiff's

termination from the Agency/Defendant and/or was asked to provide Mr. Penn's contact information during and/or following interviews, Plaintiff was not hired by those employers.

245. Plaintiff was deprived of both her property interest, as well as being encumbered from her ability to seek and qualify for federal employment with the largest U.S. employer, and even her ability to obtain suitable employment commensurate with her experience, education and professional interests more broadly, as a result of being terminated and stigmatized by the federal government without due process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands a TRIAL BY JURY and the following relief:

(A) Judgment in favor of Plaintiff and against Defendant under all Counts of this Complaint for the government Agency's unlawful practices;

(B) Declaratory, equitable and/or injunctive relief under the Due Process Clause of the Fifth Amendment and Section 702 of the Administrative Procedure Act;

(C) Declaratory, equitable and/or injunctive relief under the Due Process Clause of the Fifth Amendment, including Declaratory judgment that

Defendant Agency violated Plaintiff's rights under the U.S. Constitution as listed above;

(D) Declaratory, equitable, injunctive and compensatory (non-pecuniary and pecuniary) to the maximum extent granted under the Rehabilitation Act.

(E) A permanent injunction against Defendant/Agency generally, and Matthew Penn specifically, from additional violations of federal laws and from further disparagement of Plaintiff;

(F) Reinstatement to a substantially similar position from which Plaintiff was terminated, similar based on the nature of the work and duties Plaintiff performed prior to her termination, but in a different division/department of the Agency/Defendant free of Mr. Penn's interference; and/or (re)instatement/reemployment into another alternative position otherwise mutually agreed upon by both the Plaintiff and Agency/Defendant;

(G) Indefinite front pay in lieu of reinstatement/reemployment in the event reinstatement/reemployment is entirely and truly impossible, to compensate Plaintiff for lost future wages, benefits, and a pension;

(H) Full back pay from the date of Plaintiff's termination, including all raises and step increases, and fringe benefits, with prejudgment interest, to which Plaintiff would have been entitled based on what has been earned by her similarly-situated workers, and/or what Plaintiff would have

earned in alternative federal employment she was denied following the revelation of her termination by CDC. The back-pay amount awarded by this court may be offset by the back pay portion awarded by the EEOC's AJ and OFO during the administrative process;

(I) Full and maximum compensatory as well as pecuniary damages, in an amount to be determined by an enlightened jury, which may then be offset by the damages awarded by the EEOC;

(J) An award of pre-judgment interest;

(K) An award of additional relief and damages to be determined by an enlightened jury in order to most completely make Plaintiff truly whole, and to deter Defendant/Agency from similar conduct in the future;

(L) Reasonable attorney's fees and costs;

(M) Appropriate injunctive relief requiring the Agency/Defendant to create Agency-wide programs and/or systems to facilitate better management awareness, as well as inclusion and/or accommodation, of individuals with, diverse disabilities, including but not limited to neurodivergent conditions;

(N) Any other such equitable, monetary, injunctive, and declaratory relief as the Court deems just and proper as applicable under the Rehabilitation

Act, or under the Due Process Clause of the Fifth Amendment and Section 702 of the Administrative Procedure Act.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted January 31, 2024,

/s/

[redacted] a/k/a Tessa G.